

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GOVERNOR ANDREW M. CUOMO,	:	22-MC-03044 (TAM) (LDH)
Plaintiff,	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	September 26, 2023
	:	12:00 p.m.
OFFICE OF THE NEW YORK STATE	:	
ATTORNEY GENERAL,	:	
	:	
Defendant.	:	

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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE TARYN A. MERKL
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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	OFFICE OF THE ATTORNEY GENERAL
	LETTITIA JAMES
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	New York, New York 10005
	BY: JAMES ANDREW AMER, ESQ.
	SERENA LONGLEY, ESQ.

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1 THE COURTROOM DEPUTY: This is civil cause for a
2 status conference, docket 22-MC-03044, Cuomo versus Office of
3 the New York State Attorney General.

4 Will the parties please state their appearances,
5 starting with the movant.

6 MS. TRZASKOMA: Good morning, Your Honor. Theresa
7 Trzaskoma from Sher Tremonte, LLP on behalf of Governor
8 Cuomo, and with me is my colleague Allegra Noonan and my
9 co-counsel.

10 MS. GLAVIN: Rita Glavin of Glavin, PLLC, with my
11 colleagues Leo Korman and Katrina Petrino.

12 THE COURT: Thank you. New case. New transcript,
13 theoretically.

14 MR. AMER: Good morning, Your Honor. Andrew Amer
15 with the Office of the Attorney General. And I'm here with
16 my colleague. I will let her introduce herself.

17 MS. LONGLEY: Good morning, Your Honor. Serena
18 Longley on behalf of the Office of the Attorney General.

19 THE COURT: All right. So we are here because, as
20 everyone knows, there were substantial litigation concerning
21 a motion to compel and a motion to quash on which I issued a
22 ruling back in July, July 21st of 2023.

23 Since that time Governor Cuomo has sought
24 reconsideration, seeking to file papers in support of
25 reconsideration of that opinion and there's several

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1 complicated issues that I think warrant discussion.

2 As the parties know, the order that I issued on the
3 docket in connection with the opinion specifically requested
4 that the Attorney General's Office consider disclosing
5 information to the extent that the witnesses agreed to it.
6 And the reason for that inclusion was quite clear to the
7 Court. Whether it was clear to the parties, I don't know.
8 But my goal is to move this case forward. It is not to spend
9 another two months writing an opinion on sovereign immunity.
10 That's not my goal.

11 I know you submitted recent authority that Judge
12 Locke had ruled to quash a subpoena under similar
13 circumstances. I think the question is very complicated in a
14 case involving party actors who were in office at the time
15 where the State uniquely is the holder of documents that may
16 be relevant in connection with the investigation to that
17 person's conduct, as well other information.

18 I know that Governor Cuomo has issued a similar
19 subpoena to the executive -- I'm going to mess up the name --
20 the Governor's office, essentially, and if this type of case
21 is to be permitted to proceed in federal court and if the
22 federal courts are called upon, as they often are every ten
23 years in this state, to address the State legislatures
24 invariably to redistrict correctly and there are important
25 federal interests at stake in those kinds of cases, an

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1 important federal interest at stake in a case like this,
2 where an executive branch official and State employer are
3 accused of misconduct that is very serious. There may be
4 times, in the Court's view, where the State has to provide
5 some of the documents in their possession.

6 So I have a lot of questions about Judge Locke's
7 ruling. I have a lot of questions about the Fifth Circuit's
8 ruling on which he relied. I have questions -- you know, as
9 we discussed at the prior conference and as I observed in the
10 opinion, this is a complex and novel question of
11 constitutional law, and I'm just not at all convinced that
12 the same immunity that federal agencies enjoy and that
13 tribal, you know, entities who assert sovereign immunity,
14 tribal immunity is necessary going to attend in the state
15 context. So my goal was to encourage the Office of the
16 Attorney General to disclose what limited amounts of
17 information witnesses agreed to so that the Governor and the
18 other defendants could get the information they may need to
19 defend this case without having to reconstruct everything,
20 which they cannot do, because, as Ms. Glavin noted at the
21 argument back when we held it and in her subsequent filings,
22 memories fade, circumstance change, some of the information
23 may be relevant. I'm not saying I have reached a decision on
24 the sovereign immunity issue because I haven't. I would,
25 frankly, want further briefing by both sides.

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1 I would want to test the limits of what any
2 qualified state sovereign immunity privilege should look
3 like, and I want both sides to have the opportunity to weigh
4 in on that. It's complicated.

5 I also question, this is more for the Governor, how
6 so many of these things are styled as motion for
7 reconsideration, what I just did in the July opinion was
8 denied your motion to compel. That's it. That's all I did.
9 There's no quashing your subpoena in that opinion.

10 So I'm just very unclear as to how your new
11 arguments really would merit reconsideration, which is a
12 completely different question than whether or not you're
13 entitled to get some stuff that the Attorney General's Office
14 has, and I don't know that you want to spend a whole ton of
15 time litigating the procedural niceties of versus getting the
16 info you want. So I don't think we necessarily want to spend
17 our time on that, but because of the way it's frame, what's
18 currently before me is a motion for reconsideration, not a
19 motion to get exactly what you want after a meet and confer
20 or after witnesses have agreed to permit the Attorney
21 General's Office to turn over specific information. Again,
22 you're using a blunderbuss where you should be using a
23 scalpel.

24 And I have concerns about how the reconsideration
25 briefing has come in. I have concerns about whether or not

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1 it's even the appropriate vehicle . I question whether or not
2 that's an avenue we want to go down, whether it is a total
3 waste of time because reconsideration is a different standard
4 than the motion to compel. So I'm not sure where to start.

5 Firstly, I'd like to hear from the Attorney
6 General's Office in response to your representation that the
7 Governor -- I'm sorry, the Attorney General's Office has
8 indicated to me that they have received no requests from the
9 Governor since I issued the order in July saying please
10 consider giving stuff, you know, that the witnesses have
11 agreed to give.

12 Is that still the case, Ms. Longley? Have you
13 received any requests?

14 MS. LONGLEY: Yes, Your Honor, that's still the
15 case; we have not received any requests.

16 THE COURT: Why is that, Ms. Trzaskoma?

17 MS. TRZASKOMA: Your Honor, to be clear, we did
18 make the request repeatedly and we understood that if the
19 Attorney General were going to accede to the Court's request.
20 We did not understand we had to make a separate request for
21 that.

22 THE COURT: My order was pretty clear, that I had
23 asked them to consider disclosure of information as to which
24 witnesses agreed. And if they didn't have those requests
25 formulated in that fashion, saying you were going to rely on

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1 your prior requests doesn't seem like a great strategy.

2 MS. TRZASKOMA: I mean, Your Honor did us a favor
3 today by asking each of these nonparty witnesses whether they
4 would consent to the disclosure. But to be clear, nobody had
5 agreed to that except for Ms. Liss-Jackson, which is the
6 request that we had made.

7 So, you know, obviously -- and I think you could
8 hear that we have not been in a position to obtain consent
9 from these -- from many nonparties who claim they shouldn't
10 have anything to do with this case at all. So I think --

11 THE COURT: Scorched earth doesn't work in civil
12 discovery.

13 MS. TRZASKOMA: We have not been scorching the
14 earth. And to be fair -

15 THE COURT: College records from somebody who was
16 sexually assaulted in college is scorched earth in the
17 Court's view for a non-party.

18 MS. TRZASKOMA: In that respect, Your Honor, we
19 were not seeking records concerning sexual assault; we were
20 seeking records of a false claim of sexual misconduct. So we
21 were not seeking records of something that happened. We were
22 seeking records of something that didn't happen.

23 THE COURT: In your --

24 MS. TRZASKOMA: I think the records will show that
25 and we will get those records in the Southern District

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1 litigation. But to be clear, that is not what we are
2 seeking.

3 And right now, we been trying to use a scalpel.
4 I'm not sure -- the motion for reconsideration was very
5 targeted. It was directed to a very particular part of Your
6 Honor's decision. We did not blunderbuss it. We did not
7 seek reconsideration of every ruling in that decision.
8 Rather, we sought reconsideration with respect to two issues.
9 First, whether the AG report is relevant. And as you heard
10 from Mr. Licul earlier today, it is relevant. He intends to
11 introduce that report at trial. And, so, the allegations in
12 the Complaint --

13 THE COURT: The sentence from my ruling, which was
14 very specific and precise, which remains true, is that the
15 jury is not going to be tasked with making a determination
16 about whether or not the Attorney General's investigation was
17 thorough or complete. That is not a question before the
18 jury. And to posit in the motion for reconsideration that
19 either the Court was some way employing the wrong evidentiary
20 standard because framing that issue in that manner is not the
21 same thing as narrowing what you're seeking and trying to
22 actually move the ball forward, Ms. Trzaskoma.

23 MS. TRZASKOMA: But with all respect, Your Honor, I
24 understand the distinction that Your Honor is making, but it
25 was that ruling that a jury is never going to consider that

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1 --

2 THE COURT: I did not say that. I never said in
3 that opinion that there was no possibility that the Attorney
4 General report was coming in.

5 What I said is that they would not be tasked with
6 making a determination about whether or not the report was
7 thorough and complete, which was your phrasing from your
8 briefing as to the evidentiary relevance of the full scope of
9 information that the Attorney General's office had sought.

10 So the issue here is total failure to narrow what
11 you're trying do and establish relevancy as to specific
12 categories of documents and that is the bulk of the
13 discussion. So my question to you is not facetious and it's
14 not meant to attack in any way. I'm genuinely sincere. Do
15 you want to proceed on a motion for reconsideration that may
16 or may not be denied? It will probably prolong things. Or
17 do you actually want to try to seek documents that you want?

18 MS. TRZASKOMA: Your Honor, we definitely want to
19 seek documents that we want. We've been trying to do so
20 respectful of the Court's authority to decide the issues.
21 You know, we could have -- so in seeking reconsideration,
22 what we were asking was the scalpel, right. So, yes, we had
23 a concern about that statement in the decision, but really we
24 had a concern that the Court did not grant the motion to
25 compel even in part.

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1 THE COURT: The Court is under no obligation to
2 rewrite your discovery requests.

3 MS. TRZASKOMA: Understood.

4 THE COURT: I gave you an opportunity to narrow,
5 following the oral argument, at which I made it abundantly
6 clear that your requests were far, far, far too broad, and
7 what came back was facial modifications to the requests but
8 still ultimately seeking almost everything they had according
9 to their review of the records. There is no tying things
10 back to Trooper 1.

11 They interviewed, as we observed previously, dozens
12 and dozens of people beyond the complainants.

13 It's not reasonable or realistic to expect you're
14 going to get all of the interview notes. It's not reasonable
15 or realistic to expect you're going to get all of the
16 deposition transcripts.

17 At this juncture, before I grant you any of that, I
18 will need to reach a conclusion on the sovereign immunity
19 issue, which will require further briefing. I will then need
20 to receive a detailed -- if I were to rule on against the
21 Attorney General on that issue, I would need to receive a
22 detailed privilege log, assuming they don't take an -- some
23 sort of appeal, which they may, deciding the immunity issue.

24 So my goal here is to try to work out a path
25 forward for the parties to cooperate as opposed to coming to

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1 the Court for legal rulings because the sovereign immunity is
2 significant and the privilege issues are significant. So, if
3 you -- the delay built into the process to address both of
4 those things is not going to inure to your benefit.

5 MS. TRZASKOMA: May I point Your Honor to our
6 February 24, 2023 supplemental letter?

7 THE COURT: What was the ECF No. for that?

8 MS. TRZASKOMA: 28.

9 THE COURT: Okay.

10 MS. TRZASKOMA: And Your Honor -- after the
11 February 7th argument, Your Honor asked us to narrow and we
12 did so.

13 We requested memoranda of witness interviews by the
14 AG of the 11 complainants referred to, witnesses relating to
15 their allegations, the witness interview memoranda of
16 Trooper 1, Brittany Commisso, Lindsey McGrath, and Alyssa
17 McGrath that was for the Assembly, the documents that the 11
18 complainants provided to the Attorney General and records
19 produced by third-parties that relate to those allegations
20 and unredacted transcripts of the 41 witnesses. We narrowed
21 it and --

22 THE COURT: The only thing you cut out was
23 communications with counsel and calendar entries.

24 As the Attorney General's Office points out in
25 their response, the entirety of the investigation was focused

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1 on the 11 witnesses. So if you're seeking all documents
2 about them, provided by them, either by them or
3 third-parties, what else is left?

4 MS. TRZASKOMA: I actually don't know who they
5 interviewed. I don't have a list of 179 witnesses. Perhaps
6 that would be a starting point. But this is a little bit
7 like taking a stab in the dark. If you're asking about
8 what's relevant to -- I mean, we would very much like not to
9 have to deal with 11 complainants. It would be so much
10 easier if we were dealing with Trooper 1 because then we
11 could say it's, you know, all of the witnesses who testified
12 or gave information -- gave interviews who were, you know,
13 PSU or New York State Police witnesses, but we can't because
14 we have --

15 THE COURT: But a moment ago you argued that the
16 issue that you were taking with the Court's ruling is my
17 failure to narrow. I'm supposed to review those 73,000 pages
18 and decide what you get? That's not going to happen and you
19 know that. So to say that there is a reason to reconsider
20 for failing to narrow a subpoena as to which we don't even
21 have a document-by-document privilege log is impossible,
22 impossible.

23 So, again, I question whether or not
24 reconsideration is really the vehicle you seek or whether or
25 not a different vehicle could be more appropriate given that

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1 I did not quash the subpoena, which I think is a
2 misapprehension in your papers because you did state in your
3 papers that I quashed the subpoena that was issued to the
4 AJC, not the OAG.

5 Ms. Longley, in response to the efforts to narrow,
6 do you have anything you would like to add?

7 It seems to me that the parties' positions with
8 regard to the universe of documents set forth in document 27,
9 which was the sealed version of 28 and 29, is that still your
10 view in terms of what exists in the AG's files?

11 MS. LONGLEY: I'm sorry, are you asking are they
12 still requesting the vast majority of materials?

13 THE COURT: Yes.

14 MS. LONGLEY: Yes. It's not a meaningful cutting
15 down of the material that is being called for. It still
16 implicates the same privilege concerns, the burden concerns,
17 definitely sovereign immunity concerns. It is not a
18 meaningful change.

19 THE COURT: All right. So, Mr. Amer, it looks like
20 you have something to add.

21 MR. AMER: I just want to mention, in response to
22 Your Honor's order encouraging us to provide transcripts
23 where the witness has consented, I did want to give you a
24 broader perspective on that, because I think I heard Your
25 Honor refer to them as deposition transcripts, and I want to

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1 make sure the Court appreciates that these are not deposition
2 transcripts. A number of --

3 THE COURT: If I did that, that's a slip of the
4 tongue because I do a lot of civil discovery cases, but go
5 ahead.

6 MR. AMER: A number of affirmative bureaus in our
7 office conduct investigations as a precursor to some law
8 enforcement activity, whether it's the commencement of an
9 action or an assurance of discontinuance, whatever it may.
10 We also are tasked with investigating deaths in law
11 enforcement situations. And I've been -- I've had an
12 opportunity to conduct a number of these investigative
13 interviews, and we always start off with the same statement
14 to the witness, which is you don't have a right to obtain the
15 transcript; in fact, you don't have a right to have counsel
16 present during the interview, although often we will agree to
17 allow counsel to be present. But when we do, we instruct
18 counsel that they may not take detailed notes. So there may
19 be circumstances that occur after the interview that lead the
20 office to provide a copy of the transcript to the witness.
21 But as a general matter, these interviews are very, very
22 different from depositions. And they are done at the outset
23 with the understanding that the witness is not going to get a
24 copy of the of the unredacted transcript. They don't do the
25 errata sheet that one does when you're a deponent.

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1 With that in mind, whether or not the witness
2 consents to providing a transcript that they actually don't
3 have is not a meaningful question.

4 THE COURT: How often do you publish them on your
5 website?

6 MR. AMER: So we don't publish them unredacted. In
7 this particular situation, we publish them in redacted form.
8 I think most of the time -- well, I shouldn't speak broadly,
9 but this was a unique situation where a determination was
10 made that they would be published, but, again, in unredacted
11 form.

12 The few counsel representations that I heard about
13 whether their clients consent, in response to Your Honor's
14 question, were certainly not unconditional consents.

15 THE COURT: Agreed.

16 MR. AMER: They were consents subject to the
17 lawyers reviewing the transcripts, which proves my point,
18 which is that they don't have them. And their concerns are
19 privacy concerns for their clients, which is part of the
20 reason for why we redacted them before putting them up on the
21 website in the first place. And they don't have our concern
22 of the privilege issues that we raised, law enforcement
23 privilege issues that we raised that is another basis for --

24 THE COURT: Which you have largely waived by
25 posting them on the website. I mean, that's the thing about

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1 the website determination. That's why I asked.

2 Look, if you conduct investigations -- and when I
3 was chief of civil rights, I used to collaborate with the
4 office that conducts the wrongful death investigation at the
5 hands of the police. Alvin Bragg was my counterpart in my
6 office at the time. Look, if you do an interview in
7 connection with those investigations and ultimately it
8 becomes a criminal matter and there are things that come
9 along with it, totally understand the law enforcement
10 privilege applicability and the various privileges that you
11 assert. But the determination to publish these transcripts
12 on the website may have consequences. And that's one of the
13 things that is complicated about this whole situation. So
14 that's one of the reasons why I wanted to ask all of the
15 complainants if they had a concern about releasing those
16 unredacted transcripts because, as you know, that's something
17 that Cuomo's people have been seeking from the beginning, and
18 trying to find meaningful ways of trying to get the
19 information that they may need while also limiting the burden
20 on the Attorney General's Office as a nonparty are two of my
21 goals.

22 MR. AMER: Just two comments on that, Your Honor.
23 I appreciate and I think we all recognize that Your Honor
24 didn't rule on any of the privilege questions because the
25 basis for your ruling was relevance and burden. Those issues

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1 have not been ruled on in the Court's decision.

2 THE COURT: They can't be because I don't have the
3 document-by-document privilege log and I haven't conducted a
4 privilege review.

5 MR. AMER: I appreciate that. And the second point
6 is simply that I think we are talking about two different
7 things. I think what you just mentioned with publishing
8 unredacted transcripts on the site is a waiver question and I
9 don't think it's related to whether or not the witnesses who
10 don't have the right to get the transcript in the first
11 instance consent or not. It seems to me that those are two
12 different issues.

13 THE COURT: Those are totally different issues.

14 MR. AMER: Yes.

15 THE COURT: But in the interest of respecting the
16 survivors and complainants who came forward and in the
17 interest of advancing the law enforcement purposes that
18 undergird the law enforcement privilege in particular with
19 regard to chilling future investigations, I think witness
20 consent is important. Don't you agree?

21 MS. LONGLEY: Your Honor, can I just add to that?

22 I would agree in general, but some of the redacted
23 information in those transcripts speaks to anonymous
24 witnesses who are not the witnesses who are potentially
25 considering giving consent, but they may speak about the

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1 identity of other witnesses who are not publicly known, and
2 our office has a law enforcement interest in not publicly
3 releasing the names of those individuals or identifying
4 information about those individuals or personal and private
5 information about those individuals, and that is what is
6 contained there that triggers the privilege concerns that our
7 office has that are separate and apart from whether or not an
8 individual witness might consent to their private information
9 for their identity.

10 MR. AMER: And we seem to be going down a road now
11 where, as part of this inquiry, we now have to disclose all
12 the unredacted transcripts to the witnesses who were
13 interviewed and their counsel, which is something that, as I
14 said, is not the ordinary practice for your office, you know,
15 in all instances. That raises the waiver question. I
16 appreciate it. But I just want to point that out.

17 And it seemed to me from what counsel -- the
18 various counsels responses to Your Honor's question, the end
19 product is that their interest seem very much align with what
20 our interests were in redacting those transcripts in the
21 first place. It's hard to see why we have to go through that
22 exercise to the extent that counsel have indicated that they
23 are concerned about disclosing private information. Well,
24 that is what our redactions, at least in part, sought to
25 protect.

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1 THE COURT: Ms. Trzaskoma, would you like to
2 respond?

3 MS. TRZASKOMA: Yes, just briefly on the question
4 this is a different exercise than posting transcripts on a
5 website. There is a protective order in this case, you know,
6 witness identities, I mean, that's information we absolutely
7 should have. If someone who is being interviewed or who is
8 on-the-record testimony is being taken identifies someone
9 else who saw something, knew something, heard something,
10 that's information that we should have in connection with our
11 defense of our client in this case.

12 You know, on the question -- so I don't -- I know
13 we've talked about a need to review and redact, but that
14 need, I disagree that it exists here because there is a
15 protective order, so any personal information, I just don't
16 think that is appropriate.

17 On the question of procedure, I understand that
18 Your Honor thinks that our motion for reconsideration is not
19 the appropriate procedure, and I would ask whether it would
20 be -- so two things, first, on the sovereign immunity, we
21 have served, as Your Honor heard, subpoenas on the Cleary and
22 Vladeck firms for interview memos and transcripts, which we
23 think they have. They're not the State. There is no State
24 sovereign immunity implicated. There may be other issues
25 with these other privileges, but we can cut around the State

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1 sovereign immunity issue by litigating those subpoenas, if
2 necessary.

3 THE COURT: They are not going to give them to you.

4 MS. TRZASKOMA: I understand, but we didn't serve
5 them previously because we did not want to go around this
6 process. But if the issue is State sovereign immunity, that
7 is a way to kind of cut that particular issue out.

8 THE COURT: It's your position that the
9 investigators working for the entities appointed under State
10 law don't enjoy that immunity.

11 MS. TRZASKOMA: That is our position. It doesn't
12 protect the information. State sovereign immunity protects
13 the State entity from being compelled to act by this Court.
14 That's their theory. The Cleary firm doesn't enjoy that
15 immunity. So the information is not protected. It's not
16 that the information is immune.

17 THE COURT: But they have many arguments that the
18 information should not be disclosed too.

19 MS. TRZASKOMA: Understood. But if we can limit --
20 to Your Honor's point, that State sovereign immunity is a
21 naughty question --

22 THE COURT: Which I will reach if I need to. But I
23 am trying to look for some quasi efficient path forward and
24 we are not finding many.

25 MS. TRZASKOMA: Well, I will say that we would like

1 an efficient path forward.

2 To be clear, you know, our goal right now is, as we
3 said in our motion for reconsideration and as reflected in
4 your subpoenas to the Cleary and Vladeck firms, our focus is
5 on getting the interview memos and the unredacted
6 transcripts. But frankly --

7 THE COURT: Of whom? Everybody?

8 That's what your request, after the argument, said.

9 MS. TRZASKOMA: Of the complainants and any New
10 York State Police witness.

11 THE COURT: The document you were referring to
12 earlier requested the memoranda witness interviews of the 11
13 complainants and witnesses relating to the allegations by the
14 11 complainants, in addition to the witness memoranda by
15 Trooper 1, Brittany Commisso, Lindsey Boylan, Alyssa McGrath
16 prepared by the AJC, records provided to the OAG by the
17 complainants, and records produced by third-parties to the
18 OAG that relate to the allegations of the 11 complainants.
19 And based upon the Attorney General's representation, that
20 that encompassed basically everything since their
21 investigation was limited to those 11 complainants, that was
22 the scope of the request as I understood it when drafting my
23 opinion in July.

24 I don't really want to spend a lot of time
25 revisiting what happened in the past. If you have a narrow

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1 request now, you need to meet and confer with the Attorney
2 General's Office and see if you can try to resolve it, see if
3 their witnesses agree. They're never going to give you the
4 interview memos. They've made that super clear. That's
5 going to have to come to me on some sort of privilege review
6 and I may need to reach to the sovereign immunity question.
7 The onus is on the Governor to figure out what narrower set
8 of documents you want and figure out a way to establish
9 proportionality and relevance and/or convince the Attorney
10 General's and/or the witnesses who are implicated to give you
11 the materials.

12 MS. TRZASKOMA: Your Honor, we did make -- in our
13 motion for reconsideration, we requested a narrowing of the
14 subpoena.

15 THE COURT: That's not reconsideration. That's a
16 new request, and that's my issue with your procedural
17 vehicle.

18 MS. TRZASKOMA: I understand that, Your Honor. I'm
19 just saying in terms of us trying to identify a narrow set of
20 information -- you know, one problem, as I indicated, we do
21 not know who the 179 witnesses were. So if we could have, as
22 a starting point, a list of those witnesses, I am confident
23 that we could narrow it significantly. But at a minimum, I
24 think, you know, what we would ask, and if we need to serve a
25 new subpoena so that that is the operative subpoena for --

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1 that Your Honor will consider in this going-forward context,
2 we can do that.

3 But we know that the Attorney General interviewed a
4 number of current and former State Troopers. We'd like to
5 focus on those and we'd like to focus on the complainants
6 interview memos, as well as witnesses to the events that they
7 have -- that the other complainants have alleged.

8 THE COURT: Ms. Longley, would you like to be heard
9 in response to those comments regarding witness lists and
10 focusing on the complainants and the troopers?

11 MS. LONGLEY: Sure. Yes, please. As far as a list
12 of witnesses, that goes right to the heart of our privilege
13 and law enforcement concerns.

14 A number of the witnesses are not publicly known
15 and have expressed credible fears of retaliation, many of
16 which have continued to bear out in the public realm. We
17 would not be willing to provide a list of witnesses to
18 movant.

19 As far as which troopers provided testimony, that's
20 something that seems that movant could get from his
21 co-defendant, the troopers, who are aware of which troopers
22 were interviewed.

23 And we've never received such a narrow request such
24 as please identify all of the troopers who were interviewed.
25 That's a different request. We haven't receive that kind of

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1 a request. I think that would be available from a party to
2 this case and not from us. That is a request that we could
3 perhaps consider.

4 I do want to also address this idea of subpoenaing
5 our attorneys as an end run around this Court's decision to
6 deny their motion to compel. You know, they subpoenaed our
7 lawyers, which I -- I believe they were just served yesterday
8 and were not in a position here to fully respond to those. I
9 think the firms will respond to those subpoenas in due
10 course. But I do not think that subpoenaing them will get
11 around the sovereign immunity issue and it certainly won't
12 get around our privilege concerns on those materials and
13 those documents.

14 And the subpoenas, not only do they seek
15 information that was already the subject of Your Honor's
16 decision denying the motion to compel, they also are seeking
17 completely irrelevant, completely inappropriate materials
18 related to the billing, which, you know, the movant has
19 submitted some arguments to reopen the record on, which we
20 have responded to in writing and happy to address those if
21 that's helpful for the Court. I wanted to preview that issue
22 as well.

23 THE COURT: Ms. Trzaskoma, do you want to respond?

24 MS. TRZASKOMA: I mean, look, I completely disagree
25 that there is some law enforcement concern in telling us or

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1 any kind of concern in telling us who was interviewed: I
2 don't think that reveals any big secret. If we needed to do
3 it on an attorneys'-eyes-only basis, we can do it that way.
4 The State Police do not know who was interviewed. We are
5 kind of picking it up piecemeal.

6 THE COURT: How is that possible?

7 MS. TRZASKOMA: Some of them are former, so they
8 just don't know everyone who was interviewed.

9 MS. GLAVIN: On that point, Your Honor, we actually
10 have asked counsel for the State Police and there -- as we've
11 learned, some former State Police troopers were giving up
12 phone numbers, call this person, call that person. So we
13 don't know that the State Police even know that they were
14 interviewed, but we have repeatedly asked counsel for the
15 State Police as to who was interviewed. The problem is I
16 think there is an issue with them getting that information
17 because they were represented by their union. We have asked.
18 We have tried to go down that road.

19 THE COURT: Wait. So the union would know. I
20 don't understand the issue.

21 MS. TRZASKOMA: But the union is not providing us
22 -- I mean.

23 THE COURT: The union doesn't have a law
24 enforcement privilege or a sovereign immunity argument.

25 MS. TRZASKOMA: Your Honor, point taken. We can

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1 try to -- we have -- believe me, we have been trying to
2 cobble this together as best we can. It is not as obvious as
3 --

4 THE COURT: I don't think it's obvious at all. I
5 don't think it's obvious at all. I think it's very
6 complicated. But I also think protecting the integrity of
7 important investigations conducted by the Attorney General
8 and AJC into important issues of executive branch official
9 misconduct are very important principles as well. The Court
10 will give significant weight, if ever called to do so, to the
11 balance of those interests if I were in need to make a
12 qualified privilege analysis or a privilege review analysis.
13 The idea that this is your fast path forward is not correct.
14 There are many, many hurdles on this path, many of which are
15 very, very difficult to overcome.

16 So my purpose, again, in issuing the ruling, as I
17 did, which was very narrow, simply saying that you haven't
18 established relevance and proportionality as to all 73,000 or
19 so documents that appear to be encompassed by even the
20 revised version of your requests was in an effort to get you
21 guys to meaningfully meet and confer and see if there is
22 anything whatsoever that can be produced without a need to be
23 further very contentious litigation on these topics. It's
24 not going away.

25 And I agree with Ms. Longley, trying to subpoena

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1 the law firms, they are just going to come right back here
2 with their motion to quash and we are going to be back at
3 square one.

4 MS. TRZASKOMA: Your Honor, those subpoenas were
5 not an end run around the privilege issues. That was an
6 effort to really cut through the sovereign immunity issue,
7 which we can have a disagreement about whether that cuts it
8 out or not. Let me give --

9 THE COURT: Do you want to brief it? You're short
10 on time and all of these steps are complicated legally.

11 MS. TRZASKOMA: Let me give you an example of one
12 way.

13 THE COURT: I'm not being facetious. Do you want
14 to brief it?

15 MS. TRZASKOMA: I would like to find a way to cut
16 through this. As Your Honor can see from the binders in
17 front of me, we have briefed a lot. I would really rather
18 not, but I'm willing to do it because it's very important
19 that we get interview memos. For example, Diane Perrotta, a
20 former member of the PSU, a trooper, a former trooper whose
21 job it was to protect Governor Cuomo, we took her deposition
22 and she was not truthful, and she, I believe -- and it's a
23 very interesting thing, because Ms. Perrotta was interviewed
24 by the Attorney General's Office. She was not put under
25 oath. There is no transcript of her statements, and she's

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1 not referenced in the Attorney General's report as someone
2 who corroborates Trooper 1's story. But in her deposition
3 she said she's best friends with Trooper 1 and she said she
4 was a witness to everything Trooper 1 alleged, everything. I
5 find it very difficult to believe that that is true given
6 that that's inconsistent with Trooper 1's own complaint,
7 Trooper 1's own disclosures. And I'm very -- I believe that
8 Ms. Perrotta was not truthful with the Attorney General, and
9 I think her prior statements would expose her as an
10 untruthful person.

11 THE COURT: And -- again, back to the question I
12 asked Mr. Licul, who is still here from this morning, why do
13 we care about Ms. Perrotta? Is Mr. Licul calling her?

14 MS. TRZASKOMA: She's listed as a witness in his
15 disclosures and she -- and Ms. -- and Trooper 1 identifies
16 her as a witness to certain of her allegations.

17 THE COURT: So you have good cross-examination
18 fodder, it sounds like.

19 MS. TRZASKOMA: Your Honor, we have -- believe me,
20 I think we can, but I believe that there are other issues
21 that would be helpful in terms of examining Trooper 1.

22 THE COURT: But you don't get everything that's
23 helpful in the context of civil discovery. There is a
24 relevance and proportionality limit. This is not a criminal
25 case.

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1 You guys are litigating this as if you're seeking
2 to get all of the *Brady* out of the State. We talked about
3 this last time. It's not how this works in a civil context,
4 particularly when dealing with third-party discovery. There
5 is a proportionality limit that has to kick in at some point.

6 Seven rabbit holes down the road in terms of
7 so-and-so and so-and-so's credibility is starting to getting
8 really far afield.

9 MS. TRZASKOMA: I don't think it's far afield to
10 ask for prior statements from a witness who Trooper 1 has
11 identified as one of her witnesses. So call me crazy, but
12 that is actually highly relevant information that we are --

13 THE COURT: The interview memos are particularly
14 problematic, though, as they may well have the law
15 enforcement privilege.

16 Did they publish any of the interview memos?

17 MS. TRZASKOMA: The interview memos have been
18 provided to us and we provided some of them to Your Honor as
19 examples --

20 THE COURT: In the Albany case, I recall. But are
21 the interview memos otherwise publically available?

22 MS. TRZASKOMA: They are not otherwise publically
23 available. But, Your Honor, if you look at the interview
24 memos, there is no special law enforcement information there.

25 THE COURT: We've gone over this. We've gone over

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1 this.

2 MS. TRZASKOMA: I don't want to rethread ground
3 because I agree. I would like to find a way to cut through
4 this. I'm willing to meet and confer with the Attorney
5 General's Office.

6 THE COURT: They are never going to give you the
7 interview memos.

8 Mr. Amer is raising his finger.

9 MR. AMER: In the interest of trying to simplify
10 the proceedings, we are now looking at two new subpoenas on
11 two law firms. We're going to have to brief cross motions to
12 compel and quash. And I hear them say that the only reason
13 they served those subpoenas was because by doing so they
14 think they avoid the sovereign immunity defense. We think it
15 is absolutely clear they don't accomplish that by serving law
16 firms that acted as our agent in connection with the
17 investigation. We think it's absolutely clear that the law
18 firms, as our agent, can raise the same sovereign immunity
19 defense that the office raised in connection with the
20 subpoenas served on our office.

21 If that's the only issue for why those subpoenas
22 are outstanding, maybe it makes sense for the Court to
23 determine if those law enforcements enjoy the same sovereign
24 immunity defense without deciding the merits of that defense,
25 and then maybe they withdraw the subpoenas and we can avoid

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1 having to file a whole new round of motion practice, and, by
2 the way, you know, involve law firms that otherwise aren't
3 going to be involved in this case. It just seems like we're
4 going to waste a lot of time because we think it's absolutely
5 clear that the defense is one that they can raise.

6 THE COURT: In the legislative privilege context,
7 you know, the case law is a little more developed, that
8 persons acting on behalf of legislative entities enjoy all of
9 the same legislative privileges. Why wouldn't that be true
10 of somebody working at the behest of State pursuant to an
11 authority delegated to them by State law?

12 MS. TRZASKOMA: I think because what underlies 11th
13 Amendment, you know --

14 THE COURT: I'm not relying on 11th Amendment.

15 MS. TRZASKOMA: No, no. I'm sorry. What underlies
16 State sovereign immunity for these purposes is the order from
17 the federal court compelling action by the State agency.

18 THE COURT: But it is an agent of the agency.

19 MS. TRZASKOMA: I don't think --

20 THE COURT: It's just traditional agency law.

21 MS. TRZASKOMA: -- it is currently an agent and it
22 still possesses those documents. It is no longer an agent.
23 Clearly is no longer --

24 THE COURT: And that somehow waives the protections
25 the State might enjoy?

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1 MS. TRZASKOMA: I'm happy to brief it, Your Honor.

2 THE COURT: Really, though? That's my question.

3 This is the way you want to be spending your time.

4 MS. TRZASKOMA: Your Honor --

5 THE COURT: There are also significant layers of
6 law enforcement privilege issues, even if you were to
7 succeed.

8 MS. TRZASKOMA: Your Honor, what is extremely
9 frustrating is that the Attorney General told the public that
10 she was going to turn over -- she was going to make public
11 all of this information, and what she did is disclose --
12 cherry pick both which witnesses gave testimony and -- I
13 mean, it is a very serious manipulation of the public record,
14 because what happened is witnesses were called in for
15 interviews, then they were put on the record. Oftentimes,
16 their on-the-record testimony is not the same, is either not
17 the same or is a subset of what their interviews were. So
18 their interviews had all sorts of information.

19 I'll give you an example. Vincent Straface, who
20 was the head of the PSU, was interviewed by the Attorney
21 General's Office. According to him he was not asked a single
22 question about Trooper 1. Instead, he was asked about
23 general environment around the Governor. And one thing Mr.
24 Straface told AG investigators is that he had a very hard
25 time crediting Lindsey Boylan's statements and allegations.

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1 And why is that? Because shortly after she left the chamber,
2 or the ESD, Ms. Boylan sent Mr. Straface a personal message.
3 And in that personal message, Ms. Boylan told Mr. Straface
4 that the Governor had inspired her and been such an important
5 person in her life, and she missed him and please con --
6 please tell everyone I miss him. That's what Mr. Straface
7 told the AG investigators in his interview.

8 Then, when he was put on the record, that -- they
9 did not ask him about that. They didn't ask him a single
10 question about Ms. Boylan. Instead, they asked him about
11 Trooper 1. So there are two completely -- nor did the
12 Attorney General -- you know, he provided that text to the
13 Attorney General, but that doesn't appear in the report.
14 That doesn't appear in his transcript. That wasn't an
15 exhibit that was publicly disclosed. It's -- I'm not just
16 talking about -- we're not just talking about a typical
17 investigative situation where witnesses are interviewed and
18 then they're locked into their testimony on the record.
19 These two things often are very different. So it's not just
20 like a luxury to get the interview memos. It's really
21 important information.

22 On the question of the 73,000 documents or not, the
23 73,000 documents are the documents that they collected during
24 the investigation. Again, I don't know what they have. I
25 have a feeling a lot of them came from the executive chamber

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1 or the State Police or some other agency. But we don't
2 exactly know what those are. But those are different than
3 the interview memos.

4 And one question I have and that's raised in the
5 recent letter about the billing that Cleary did is whether
6 the Attorney General's Office, through Cleary, already
7 reviewed and redacted the interview memos anticipation of
8 having to turn them over, because what Ms. Longley -- what
9 the AG's submissions so far indicate is they haven't reviewed
10 and redacted the 73,000 pages. But that's separate and apart
11 from the interview memos. So if the AG's office has paid --
12 if the taxpayers of the State of New York have paid Cleary
13 millions of dollars to review and redact additional interview
14 memos and those are not being turned over, I would like to
15 know that.

16 THE COURT: I'm sure you would, Ms. Longley.

17 MS. LONGLEY: Your Honor, a few things. We are
18 here on a motion to reconsider and these are the exact same
19 arguments that were made on a motion to compel, which is that
20 it would be really helpful and convenient and they might find
21 impeachment or exculpatory information if they had interview
22 memos or unredacted transcripts as they took depositions.
23 This is not a new argument. It's the same argument they've
24 made. They're just filling it with now that they have
25 actually taken some depositions and said, oh, look what we

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1 said was going to happen has happened, so now we really want
2 those interview memos. It's improper on a motion for
3 reconsideration and it should be denied.

4 As far as the questions about the fees and the
5 payments, we have -- we think they are completely irrelevant.
6 We have been clear with the Court that the burden would be
7 the same as presented in opposition to their motion to compel
8 and in support of our motion to quash. We don't think we
9 should have to explain what Cleary has done. We don't want
10 to waive attorney-client privilege in any way. We can say
11 that since this litigation has begun they have not been
12 redacting documents in preparation of producing documents
13 with the exception of the few documents we voluntarily
14 produced that referenced Trooper 1 by name.

15 And as far as the -- I don't know if Your Honor
16 wants me to respond to the comment about the interview memos
17 and whether those have been redacted previously.

18 THE COURT: Look, the way this is headed, I may
19 well need to review a subset of interview memos to evaluate
20 the assertion of the law enforcement privilege.

21 What is the current status of these interview
22 memos?

23 MS. LONGLEY: One quick note, which is that it's
24 our position if the Court were to go in that direction, the
25 Court would first have to resolve sovereign immunity.

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1 THE COURT: I'm very aware.

2 MS. LONGLEY: In the event the Court resolved
3 sovereign immunity and it's not in our favor and appeals are
4 exhausted, at that point we would look at the interview
5 memos. What I can say is they have not been redacted for
6 potential production or review under the civil standards of
7 discovery. They were redacted under the criminal standards
8 for production to fellow law enforcement. There is a
9 difference of privileges. There is a different standard even
10 for attorney work product on the civil and criminal side. It
11 would be time intensive and burdensome to review those for
12 redaction.

13 THE COURT: How many pages are the interview memos
14 of the complainants? Do you know?

15 MS. LONGLEY: I can't answer that off the top of
16 the my head. What I can say is there are over 150 of them
17 and that -- you know, probably closer to 200 of them, and
18 that they probably range in pages, I'm guessing two pages to
19 ten pages each. Maybe some are longer, but I don't have a
20 page count on that.

21 THE COURT: Okay. The number you mentioned 150 to
22 200, that's the total number of witnesses, right?

23 MS. LONGLEY: Correct.

24 And what I would like to add is while they may not
25 be voluminous in pages, and I believe they are single spaced,

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1 but they do contain some very, very sensitive information
2 about other nonparties, about individuals who are not
3 publicly known and that have nothing do with the Trooper 1
4 case and are really, really far afield from the Trooper 1
5 case. And the vast majority of the witnesses don't know
6 Trooper 1, don't know her identity, didn't know her at the
7 time, have never talked about her. They were not asked about
8 her. It's really -- we are talking about highly sensitive,
9 privileged information that goes to the heart of our offices
10 ability to conduct these kinds of investigations in the
11 future and that have no relevance to the Trooper 1 case.

12 MR. AMER: I did want to quickly circle back to the
13 Cleary and Vladeck subpoenas. We only have conducted
14 research, you know, for a day and we've already found a case
15 by Judge McMahon. It is called *Catskill Development versus*
16 *Park Place*. It is 206 Federal Rule decision 78, 2002
17 decision, involving a firm representing tribal, a tribe,
18 where she held that the law firms subpoenaed enjoyed tribal
19 sovereign immunity. We just think it's crystal clear that
20 the subpoenas on the firms did not eliminate the sovereign
21 immunity defense and it would be, I think, in everybody's
22 interest if we could get those subpoenas withdrawn and not
23 have to have that separate battle, which it is going to
24 involve, as I said, at least two more parties, both law firms
25 and a whole new round of motions.

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1 THE COURT: Right. Look, this is a really
2 intractable situation, as I see it. Ms. Trzaskoma and
3 Governor Cuomo's team, since the beginning of the motion
4 practice have repeatedly asserted that they want the
5 interview memos and I get that. I understand the reason that
6 you want the interview memos. They have been -- it has been
7 argued at length both at the prior argument and more today
8 that the Attorney General's Office believes that they are not
9 required to respond to those requests due to the assertion of
10 common law sovereign immunity. Whether or not that is the
11 case remains to be seen.

12 At least one of our judges in our court just
13 recently squashed a subpoena on those grounds. Whether I
14 would follow that ruling remains to be seen.

15 Layered on that, you have the other private
16 assertions, which are complicated. And then, Ms. Longley
17 also made the -- slipped it in there, but I definitely picked
18 up on it, the possibility of the Attorney General's Office
19 appealing if I were to rule against them on the sovereign
20 immunity question and reach the underlying substantive
21 issues.

22 We are talking about a multi-month process here, if
23 not a year for the case to go up and down to the Court of
24 Appeals. And that was apparent to me when I issued my ruling
25 in July. These are the steps and the road that what would

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1 need to happen for these documents to land in Governor
2 Cuomo's corner if I were to even find that they were not
3 protected by the law enforcement privilege.

4 So the question of whether or not we go down the
5 road is something that really is in Governor Cuomo's court.
6 You have repeatedly insisted that this is what you want,
7 these are the documents you're seeking, and to the extent of
8 now subpoenaing their lawyers for them.

9 I question whether you have any contrary authority
10 to Ms. Amer's case. Do you have any?

11 MS. TRZASKOMA: I would have to look at that case
12 to see it. But to be clear, we did not subpoena the firms as
13 like a -- to set the stage for a different dispute.

14 As I said, it was a way to try to eliminate at
15 least one aspect of the disputes. And I'm happy to meet and
16 confer with counsel about that.

17 But, you know, when we were here in February, the
18 AG's office said we are immune from the subpoena, but there
19 are other ways you can get the information. You can go FOIL,
20 serve a FOIL request. AND I just want to make clear some of
21 the things we have done. We did serve a FOIL request, and
22 the response THAT we got back was I can't do it before March
23 '24, I'm sorry, March 2024.

24 There is one FOIL officer who's all alone in that
25 office who is dealing apparently with multiple FOIL requests

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1 every day, and she's just not going to be able to get to it,
2 and it's not clear what we'd get.

3 THE COURT: You won't get most of it anyway if they
4 are asserting the law enforcement privilege.

5 MS. TRZASKOMA: Maybe there is an Article 78
6 proceeding that we will commence that will try to tackle that
7 because I think their assertion of the privileges -- well,
8 you know what we think about them. But in any event, I don't
9 think there is -- in any event, that may be an avenue that we
10 are pursuing.

11 I mean, but another way that we tried to get at
12 some of this information is we served a subpoena on
13 Trooper 1's counsel who represented Trooper 1 during her
14 interview with the AG's office asking for her notes of the
15 interview and she took no notes. So the AG interview memo is
16 the only record of Trooper 1's prior statement.

17 THE COURT: You have the transcript. But, again,
18 so two things: One, we know from Ms. Perrotta that all of
19 the troopers, including Trooper 1, were talking among each
20 other about the investigation while they were being
21 interviewed by the AG's office. That unit in particular and
22 maybe the entire New York State Police is a hotbed of gossip
23 and rumor, you know. You know, we haven't taken all that
24 many depositions of all those troopers. But I will tell you
25 that each one of them has told us there's a lot of office

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1 rumor and they're all talking to each other. I do have
2 questions about whether her on-the-record testimony is
3 consistent with what she told them in her interview.

4 I'm particularly interested in whether she suddenly
5 remembered more things that she went on the record with than
6 she had told AG's investigators at the outset. But that's
7 just an example. We can't get that information because her
8 lawyer didn't take notes.

9 THE COURT: She's not represented by the same
10 attorney as she was before?

11 MS. TRZASKOMA: No, she was represented by the
12 union lawyer in that.

13 THE COURT: Has that attorney agreed to speak with
14 you?

15 MS. TRZASKOMA: The attorney doesn't really
16 remember. She didn't take notes. She thought that the
17 interview memo -- that the on-the-record testimony was
18 similar, but more, more than the on-the-record testimony. So
19 there was more --

20 THE COURT: I understand what the word "more"
21 means.

22 MS. TRZASKOMA: So we have been trying to do this.
23 And my concern about -- I hear Your Honor, these
24 are very difficult questions.

25 THE COURT: No, you're not going to get the

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1 information in the amount of time you need it. That is my
2 concern and you don't seem to be acknowledging that this is
3 real.

4 The FOIL people are telling you March 2024. Even
5 if we were to rule on sovereign immunity against the AG and
6 then they appeal it, that's going to take however long that
7 takes. So you need to figure out a path forward that
8 actually is viable.

9 MS. TRZASKOMA: But, Your Honor, basically what
10 you're telling us is we cannot get the information from the
11 Attorney General, because if there were a normal situation
12 where we could go meet and confer and they might be amenable
13 to giving us some interview memos of Trooper 1 and the
14 complainants and maybe a couple of other particular
15 witnesses, I would be all in for that. But what I am hearing
16 from them and what we have heard from them is full stop
17 nothing. We are not giving you anything, even with
18 witnesses --

19 THE COURT: I haven't heard that, Ms. Trzaskoma.
20 I've been listening too.

21 Earlier today Ms. Longley said we've never heard
22 this narrow request before, we are willing to consider that.
23 You can get the transcript. I'm sure it's there. And Mr.
24 Amer said similar comments in our prior oral argument. You
25 have not made any efforts to narrow what you have been asking

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1 for despite my recommendation to do so at the prior oral
2 argument and despite my explicit order saying please talk to
3 them and figure out if there are certain documents that they
4 are willing to give to you that the witnesses might agree to.
5 I fully get that the Attorney General's Office has various
6 concerns about disclosing that information, but you have done
7 virtually nothing, in my point of view, to meaningfully meet
8 and confer and narrow these issues with the Attorney General.

9 I recall at the end of our oral argument telling
10 Mr. Amer I'm not ordering you to meet and confer because I
11 haven't ruled on the sovereign immunity question. But the
12 Attorney General's Office, like any state agency, I would
13 trust, is likewise interested in reducing their litigation
14 burden and trying to streamline this as much as they possibly
15 can.

16 If there is any path forward, I suspect they will
17 try to work with you. Because this is incredibly burdensome.
18 You're now subpoenaing their law firm -- you're making
19 allegations regarding the payments and accusing them --
20 almost akin to misconduct on the basis of seeing some oral
21 responses about billing records. That briefing was totally
22 inappropriate. I'm not getting the impression that the
23 Attorney General's Office has entirely slammed the door.

24 Is that correct, Ms. Longley? Have you entirely
25 slammed the door?

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1 MS. LONGLEY: Your Honor, we started off this
2 process by offering documents that we thought reasonably
3 could be potentially relevant and those documents were
4 documents that we collected this referenced Trooper 1 by
5 name. That was our initial response to the subpoena. We did
6 try to work it out.

7 And I know, Your Honor, from hearing you before,
8 you're not interested in rehashing all of the meet and
9 confers that we had. But it was clear that the movant was
10 not willing to narrow the subpoena, and then we have been
11 going through this process. We have been litigating it.
12 They have not attempted, you know, to narrow anything or meet
13 and confer with us since.

14 But I will say, we'll always take something under
15 consideration. If there is a reasonable request made that
16 doesn't call for privilege information and does not implicate
17 sensitive information of cooperating witnesses who are afraid
18 of retaliation, you know, I think that -- and is it relevant.
19 I think that really is important for us. Is it relevant to
20 the Trooper 1 case? Are witnesses -- are potential future
21 witnesses for our potential future investigations, everyone
22 in the world is going to see that we are just willy-nilly
23 giving out people's information even if it is not tethered at
24 all to actual claims in a litigation. I think if there's a
25 reasonable request, we will consider.

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1 In the background, there is always the sovereign
2 immunity concern and our belief that we actually, you know,
3 can't be forced to provide the documents. But that said, if
4 there are documents that would be available, for example,
5 under FOIL, which is something we raised with counsel from
6 the beginning. Why don't we give you what you could
7 potentially get under FOIL? They were not interested in
8 that. They wanted all of our communications with counsel.
9 They wanted every note the attorneys ever took throughout the
10 investigation even if it had nothing to do with Trooper 1.

11 So, yes, we have not slammed the door. That said,
12 you know, I think what they really want are interview memos.
13 What I am hearing again today is they want interview memos so
14 they can -- you know -- as impeachment evidence against the
15 investigation because it's not really for the Trooper 1 case.

16 The Trooper 1 case, they have prior sworn testimony
17 that's likely redacted online. They can use that to try to
18 impeach the witnesses in the context of the Trooper 1
19 litigation. What they really want is to compare the
20 interview notes from the investigation to the testimony of
21 the investigation so they can say the investigators got it
22 wrong, which is really not what the lawsuit is about. That's
23 why they want that material. This is unprecedented how much
24 material is available online.

25 THE COURT: It is, which also raises issues as to

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1 whether or not your privileges still attach, and that's
2 another layer of complexity here, and that is a layer of
3 complexity that I think bears on all of the analyses.

4 If the legislature has only a qualified legislative
5 privilege, why is the executive branch's superior and what
6 portions of the executive branch enjoy that privilege? All
7 agencies, you know, chartered by New York State have to
8 provide nothing in federal court strikes me as a stretch. I
9 understand the Fifth Circuit's ruling. I've read the
10 decision I've read Judge Locke's decision closely. Other
11 courts thought this argument was so ridiculous, like the
12 Eight Circuit, they didn't even bother to analyze it. This
13 has never been the law, to reply to the subpoena.

14 This is a serious, very serious issue with huge
15 implications all for all kinds of cases, the wrongful death
16 cases that Mr. Amer referenced earlier, every ten years
17 needing the redistricting processes to come to federal court.
18 If cannot be, in the Court view, this is a complete privilege
19 from participating in federal court litigation once New York
20 State decided to join the union.

21 MS. LONGLEY: Your Honor --

22 THE COURT: The common law that Mr. Amer described
23 that he was relying on in the prior argument is not the 11th
24 amendment sovereign immunity but the federal common law, and
25 common law evolves over time and joining the union and

1 becoming an increasingly active participant in the governance
2 of our State has ramifications for New York State agencies.
3 I don't think we are looking at pre-ratification case law and
4 pre-ratification governmental structures in deciding whether
5 or not sovereign immunity would attach in all instances and
6 in all circumstances, at all times. And in this specific
7 case, where the Attorney General's Office has made an
8 affirmative decision to publish tons of materials online and
9 put a ton of information out there, I think that there are
10 questions similar to the legislative privilege balancing
11 analysis that would apply to the legislative branch.

12 So this is a really complicated inquiry and one
13 that neither party has had an opportunity to fully brief. I
14 have not asked to fully brief the question of whether there's
15 a qualified privilege and what that would look like, and
16 that's where this would need to go next, unless Governor
17 Cuomo is willing to work on narrowing these requests in a
18 meaningful way and recognizing the timing and complexities of
19 the discovery process here.

20 Ms. Glavin is raising her hand literally.

21 MS. GLAVIN: I want to get this. I want to pose
22 this question to the Attorney General's Office, okay.

23 With respect to the interview memos, okay, for the
24 11 complainants, would you be willing to produce the
25 interview memos for those 11 complainants, plus interview

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1 memos of people who were witnesses, alleged witnesses to
2 those allegations? Would you be willing to produce those to
3 us?

4 MR. AMER: So we are not going to respond like this
5 in open court.

6 MS. GLAVIN: But would you consider it?

7 MR. AMER: Let me finish. Let me finish. If you
8 want to make a narrowed request that withdraws the pending
9 subpoenas against the law firms, confirms that if your
10 request is, you know, going to withdraw your motion for
11 reconsideration, you're not going to object, and we're going
12 to resolve this, then make that request and we will consider
13 it.

14 I don't know the answer to it because, you know,
15 you're making it on the spot here and nobody's had a chance
16 to review it.

17 MS. GLAVIN: I get it.

18 MR. AMER: But don't make a request that's not with
19 prejudice to the larger subpoena that you have issued because
20 we are not going to do, you know, death by 1,000 cuts here.

21 MS. GLAVIN: I get it.

22 THE COURT: The challenge that we're facing, again,
23 relates back to the first question of the day to Mr. Licul,
24 who is still here, I'm smiling and looking at him; he is
25 smiling back, which is really the scope of the plaintiff's

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1 case here.

2 I believe you were here, Ms. Longley, for the
3 argument.

4 MS. LONGLEY: Yes.

5 THE COURT: I think I saw you in the back.

6 It is extremely broad as presently drafted in the
7 Complaint and as according to the Rule 26(a) disclosures.
8 Whether or not that's going to stay plaintiff's case, I don't
9 know.

10 I'm urging plaintiff's counsel to really think hard
11 about Rule 404(b), 403, how strong the similarities are
12 between these various instances of misconduct to see if those
13 other instances are likely to come in at trial. I would also
14 urge the Governor Cuomo attorneys to really think hard about
15 whether there is sort of any ways that they can work with
16 plaintiff's counsel to narrow the scope of the allegations in
17 the case.

18 But -- the lay of the land in the Trooper 1 case,
19 with regard to your point earlier, Ms. Longley, with
20 reviewing relevance is it's a very broad set of allegations
21 that are presently in the case.

22 MR. AMER: But as Your Honor cogently pointed out
23 both here and in your decision, it's not going to be for this
24 jury to decide whether our investigation was thorough and
25 proper. So to the extent the material they seek goes to that

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1 question, that's not going to be something that our office is
2 going to consider as relevant.

3 THE COURT: Understood. But everybody knows that a
4 prior interview where somebody provided significantly less or
5 significantly more or slightly different information can be
6 effectively utilized for cross-examination and/or
7 understanding the evolution of that person's story. It's not
8 exclusively for the purposes of attacking the investigation,
9 to be perfectly fair to their position. It's not black and
10 white like that. This is, as we've discussed now for almost
11 an hour and a half, super complex set of issues.

12 I'm directing the parties to go back to the drawing
13 board and meet and confer with regard to these recent
14 developments as to the subpoena, to the law firms for the
15 Attorney General's Office, and is it also the AJC?

16 MS. GLAVIN: No.

17 THE COURT: So please go back to the drawing board
18 and discuss these subpoenas to the law firms. If there's
19 authority in support of the notion that they don't enjoy
20 sovereign immunity, maybe there's a good-faith basis to issue
21 those subpoenas to address that issue. It certainly strikes
22 me as questionable in light of basic agency law that somebody
23 would suddenly lose that protection because they are still
24 employed. I mean, I have a lot of issues, a lot of questions
25 legally as to that position, Ms. Trzaskoma. And see if there

1 is any narrowed set of information that the parties may be
2 able to agree upon. I'm not optimistic. But this isn't
3 working.

4 Litigating, as a matter of law, every single point
5 of discovery in this case isn't going to work. I think that
6 the binders we were joking about earlier prove that. This is
7 why civil discovery is so, so challenging, right, because the
8 Court doesn't know what information you have, what
9 information you need, where the information might be, what
10 steps you have taken to find it, what that person's position
11 is. And in order for me to issue a ruling as a matter of
12 law, I need concrete information as to all of those things.
13 And that's very, very hard to establish.

14 MS. TRZASKOMA: You're not going to get any
15 argument from me about the absolutely vexing nature of
16 discovery in any civil case, but this case is like on
17 steroids.

18 THE COURT: It's a unique case.

19 MS. TRZASKOMA: It's unique, and the number of
20 nonparties that have relevant information who are not willing
21 to cooperate is remarkable. That has been very frustrating.

22 If we cannot brief another motion, I don't think
23 that's possible given what we heard this morning, but I take
24 Your Honor's point. We will, you know, be in touch with the
25 AG's office and meet and confer as you have directed.

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1 THE COURT: Thank you.

2 And can I ask the parties for a joint status update
3 in two weeks as to the plan forward, the path forward with
4 regard to the current motions for reconsideration and other
5 motions?

6 I think I said pretty strongly that this doesn't
7 strike me as a motion for reconsideration per se, although I
8 understand sometimes you can move for a motion for
9 reconsideration if there's new information, most of this is
10 new, what's included in subsequent papers. The idea that the
11 reconsideration is the correct vehicle I think is a
12 questionable one. But I would prefer, again, not to have to
13 litigate that issue. I would prefer for the parties to find
14 some path forward to actually get some information flowing as
15 opposed to legal conclusions that don't actually advance the
16 discovery purposes at all.

17 MR. AMER: Your Honor, would you consider staying
18 the deadline for the two firms to respond to the subpoena
19 pending an attempt to work this out?

20 THE COURT: Yes.

21 MS. GLAVIN: We're fine. We won't enforce while we
22 go through this.

23 MR. AMER: Thank you.

24 THE COURT: Yes. I will temporarily stay that
25 deadline until we figure out a path forward because this

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1 isn't going to work as a practical matter.

2 All right. I look forward to hopefully hearing
3 there is some sort of a path forward. If not, we will have
4 to revisit the sovereign immunity issues. There may be a
5 need for a very detailed privilege log. It's going to be a
6 process and it's going to take a long time. I'm not saying
7 that as any kind of threat or anything; it's just a fact.
8 And, you know, it is something you guys need to think hard
9 about in deciding what positions to be taking in regards to
10 your conversations with them and where to press on your
11 litigation strategies.

12 MS. TRZASKOMA: Understood. Thank you, Your Honor.

13 MS. GLAVIN: So we will get a status letter with
14 OAG office within two weeks.

15 Can we, while plaintiff's counsel for Trooper 1 is
16 here, address the discovery deadline? Because we think we
17 need a little extra time to respond to some briefs, but we
18 have the October 16th deadline. So given the press of that
19 deadline, we'd like to propose something new at least for the
20 time being or a placeholder while we try to work through
21 these issues.

22 THE COURT: Okay, Mr. Licul, do you mind coming
23 back up? Do you have any objection to some extension of the
24 fact discovery deadline.

25 I don't really see that I have a choice given the

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1 pending motions.

2 MR. LICUL: I think that's right. In principle, I
3 have an objection, but practically, I'm not going to object,
4 Your Honor, so long as we have a deadline that is not so far
5 out. Like I said, we are prepared to finish our discovery.

6 I know that doesn't mean much for the Cuomo folks.

7 Nonetheless, we just need his deposition, I think one more.

8 THE COURT: I will take a look at the dates.

9 How much time were you thinking of, Ms. Glavin?

10 MS. GLAVIN: Your Honor, what Ms. Trzaskoma and I
11 were just thinking about is can the court adjourn the
12 discovery deadline and then let us have an opportunity to
13 confer with Trooper 1's counsel because I think some of this
14 is going to have to do with what documents we get, whether
15 this becomes narrowed and whether there is a way to do that,
16 and I'd like to be able to do that informed because it would
17 be great if we can narrow the scope of some of this.

18 I have some proposals for Trooper 1's counsel about
19 narrowing perhaps some of the complainants that are currently
20 in the Complaint.

21 THE COURT: Mr. Licul, similar to my question of
22 the Attorney General's Office, are you willing to engage in a
23 very meaningful meet and confer and file a joint letter in
24 two weeks providing any clarification as to whether or not
25 any of these issues have been narrowed or resolved and

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1 proposing a revised jointly proposed discovery schedule?

2 MR. LICUL: I think we might need a little more
3 than two weeks on our end. I know I have asked for less
4 time.

5 The scope of what we're going to be discussing is
6 pretty big. I'm sure Ms. Glavin has some pretty good
7 requests from me. We can hash it out. Or, at least, Friday
8 to hash it out.

9 MS. GLAVIN: Perhaps you can confer with some of
10 the nonparties.

11 THE COURT: Perhaps. And perhaps you guys can
12 decide it might make sense to take things out of order. I
13 mean, I've been hearing since January that there may be an
14 interest in striking allegations, moving to preclude. I'm
15 not inviting that motion practice as part of discovery, but
16 at the end of the -- as I noted during the main argument on
17 the Trooper 1 case, I'm very concerned about how the
18 discovery is proceeding vis-à-vis the victims. And if there
19 are persons who are being dragged through this process and
20 potentially re-traumatized for the possibility that they
21 might have the opportunity to testify at trial, that is not a
22 good use of the civil discovery process and, frankly, very
23 problematic.

24 MR. LICUL: Your Honor, I would just say all of the
25 lawyers obviously are very competent who represent each of

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1 the witnesses, but what I did not hear was attorneys who said
2 we simply don't want to comply with these requests, we're not
3 giving you anything. In fact, what I heard was a series of
4 lawyers who came up here and said we gave them this
5 information, we gave them that information.

6 THE COURT: And they also said my client doesn't
7 know Trooper 1, never met Trooper 1, doesn't know who
8 Trooper 1, and has no idea why she's involved with this
9 lawsuit and she wants to be done with it.

10 MR. LICUL: Well, also, Your Honor, that is not the
11 issue in the case. The issue in the case is Governor Cuomo's
12 interactions with that --

13 THE COURT: I'm fully aware of your theory of
14 relevance. It doesn't make it admissible in every instance.
15 So I need you to look hard at the various allegations of each
16 of these complainants and seriously consider tailoring your
17 case, because at some point the Court may end up having to do
18 it for you.

19 MR. LICUL: That's fine, Your Honor. We absolutely
20 will do that and will consider that. But I do think that
21 there is something amiss about a person, a woman not being
22 able to prove a hostile work environment claim under Second
23 Circuit precedent because her fellow victims are being
24 targeted with many subpoenas and tortured that way.

25 THE COURT: That's not the issue. The issue is

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1 403, 404(b). There are a lot of other issues at play.

2 MR. LICUL: Well, again, Your Honor, but I don't
3 mean to get ahead of ourselves. We certainly will consider
4 it. I --

5 THE COURT: I hear your theory of relevance. I
6 truly do. I question how far it extends. Keep that in mind.

7 MR. LICUL: Yes, Your Honor.

8 THE COURT: Thank you all. Very informative, as
9 usual.

10 Hopefully, the parties can make some progress and
11 the nonparties can make some progress in the next few weeks.

12 Then, Mr. Licul, you said you need a little more
13 time. When can the parties meet and confer, hopefully narrow
14 and give me a status report update?

15 MR. LICUL: Three weeks.

16 THE COURT: Does that work for you, Ms. Glavin?

17 MR. LICUL: At the end of three weeks.

18 THE COURTROOM DEPUTY: October 17th is three weeks
19 out.

20 THE COURT: Will that work for you?

21 MR. LICUL: Yes.

22 THE COURT: Ms. Glavin?

23 MS. GLAVIN: Yes, Your Honor.

24 THE COURT: Okay. All right. Thank you.

25 Just to be formal about it, the two weeks out for

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1 the OAG. And the Cuomo matter is, of course, October 10th.

2 Thank you all. I look forward to receiving
3 follow-ups. At a minimum, it may help clarify what I
4 actually have to rule on, in which case I will rule on more
5 things.

6 MS. TRZASKOMA: Thank you, Your Honor.

7 MS. GLAVIN: Thank you, Your Honor. Nice to see
8 you.

9 THE COURT: Nice to see you all too.

10 (Matter adjourned.)

11 * * * * *

12 I certify that the foregoing is a correct transcript from the
13 record of the proceedings in the above-entitled matter.

14 /s/ Michele Lucchese

September 29, 2023

15 Michele Lucchese

DATE

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